

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

LEIDY TATIANA CARVAJAL)	Civil Action No. 3:19-cv-00170
ARCHULETA, individually, and in her)	
capacity as Administratrix of the Estate of)	
SEAN ARCHULETA, and as next friend)	
of minors JA and VS,)	
)	
Plaintiff,)	
)	
vs.)	
)	
ATLAS AIR WORLDWIDE HOLDINGS,)	
INC., ATLAS AIR, INC.,)	
AMAZON.COM, INC., and AMAZON)	
FULFILLMENT SERVICES, INC.)	
)	
Defendants)	
)	

**ANSWER OF DEFENDANTS AMAZON.COM, INC. AND AMAZON FULFILLMENT
SERVICES, INC. TO PLAINTIFF'S FIRST AMENDED COMPLAINT**

Defendants AMAZON.COM, INC. and AMAZON.COM SERVICES, INC. (successor-in-interest to Amazon Fulfillment Services, Inc.),¹ by and through its undersigned counsel, answers Plaintiff's First Amended Complaint ("Amended Complaint") and asserts its affirmative defenses as follows:

Each paragraph of this Answer responds to the same numbered paragraph of the Amended Complaint. Except as otherwise expressly alleged, AMAZON denies each and every allegation in the Amended Complaint.

¹ AMAZON.COM, INC. and AMAZON.COM SERVICES, INC. are collectively referred to herein as "AMAZON."

AS TO THE NATURE OF THE NATURE OF THE CAUSE OF ACTION

1.1 AMAZON admits only that on February 23, 2019, Atlas Air, Inc. ("Atlas Air") Flight 3591 crashed at Trinity Bay, Texas, resulting in the deaths of all occupants aboard. AMAZON lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 1.1 of the Amended Complaint and, therefore, they are denied.

AS AND TO THE PARTIES

2.1 AMAZON lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2.1 of the Amended Complaint and, therefore, they are denied.

2.2 AMAZON lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2.2 of the Amended Complaint and, therefore, they are denied.

2.3 AMAZON lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2.3 of the Amended Complaint and, therefore, they are denied.

2.4 AMAZON lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2.4 of the Amended Complaint and, therefore, they are denied.

2.5 AMAZON lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2.5 of the Amended Complaint and, therefore, they are denied.

2.6 AMAZON lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2.6 of the Amended Complaint and, therefore, they are denied.

2.7 AMAZON admits only that AMAZON.COM, INC. is a Delaware corporation with a principal place of business in Seattle, Washington. The remaining allegations in paragraph 2.7 of the Amended Complaint contain legal conclusions to which no response is required.

2.8 AMAZON admits only that AMAZON.COM SERVICES, INC. is a Delaware corporation with a principal place of business in Seattle, Washington. The remaining allegations in paragraph 2.8 of the Amended Complaint contain legal conclusions to which no response is required.

2.9 AMAZON admits only that on February 23, 2019, a Boeing 767-375ER (SF) with Registration N1217A and operating as Atlas Air Flight 3591 from Miami, Florida to Houston, Texas, crashed at Trinity Bay, Texas, resulting in the deaths of all occupants aboard. AMAZON lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 2.9 of the Amended Complaint and, therefore, they are denied.

2.10 AMAZON admits only that on February 23, 2019, the Atlas Air Flight 3591 aircraft was transporting cargo and crashed at Trinity Bay, Texas, resulting in the deaths of all occupants aboard. AMAZON lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 2.10 of the Amended Complaint and, therefore, they are denied.

2.11 AMAZON admits only that on February 23, 2019, Atlas Air Flight 3591 crashed at Trinity Bay, Texas, resulting in the deaths of all occupants aboard. AMAZON lacks

knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 2.11 of the Amended Complaint and, therefore, they are denied.

AS TO THE JURISDICTION AND VENUE

3.1 The allegations in paragraph 3.1 of the Amended Complaint contain legal conclusions to which no response is required.

3.2 The allegations in paragraph 3.2 of the Amended Complaint contain legal conclusions to which no response is required.

3.3 The allegations in paragraph 3.3 of the Amended Complaint contain legal conclusions to which no response is required.

3.4 AMAZON admits only that Atlas Air Flight 3591 crashed at Trinity Bay, Texas, and respectfully refers all matters of law contained therein to the Court.

AS TO THE FACTS GIVING RISE TO THE CAUSE OF ACTION

4.1 AMAZON admits only that in May 2016 AMAZON.COM SERVICES, INC. and Atlas Air entered into an Air Transportation Services Agreement pursuant to which Atlas Air agreed to provide air cargo transportation and certain other services in the United States to AMAZON.COM SERVICES, INC. using Atlas Air equipment, personnel and supplies, including twenty Boeing 767-300 operated by Atlas Air.

4.2 AMAZON admits only that on February 23, 2019, a Boeing 767-375ER (SF) aircraft (Registration N1217A) operating as Atlas Air Flight 3591 was an aircraft being operated by Atlas Air pursuant to the Air Transportation Services Agreement.

4.3 AMAZON admits only that on February 23, 2019, a Boeing 767-375ER (SF) aircraft with Registration N1217A was operating as Atlas Air Flight 3591 from Miami, Florida to Houston, Texas and was operated by Atlas Air.

4.4 AMAZON lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4.4 of the Amended Complaint and, therefore, they are denied.

4.5 AMAZON lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4.5 of the Amended Complaint and, therefore, they are denied.

4.6 AMAZON lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4.6 of the Amended Complaint and, therefore, they are denied.

4.7 AMAZON lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4.7 of the Amended Complaint and, therefore, they are denied.

4.8 AMAZON lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4.8 of the Amended Complaint and, therefore, they are denied.

4.9 AMAZON lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4.9 of the Amended Complaint and, therefore, they are denied.

4.10 AMAZON lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4.10 of the Amended Complaint and, therefore, they are denied.

4.11 AMAZON admits only that on February 23, 2019, Atlas Air Flight 3591 crashed at Trinity Bay, Texas, resulting in the deaths of all occupants aboard. AMAZON lacks

knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 4.11 of the Amended Complaint and, therefore, they are denied.

4.12 AMAZON lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4.12 of the Amended Complaint and, therefore, they are denied.

4.13 AMAZON denies the allegations in paragraph 4.13 of the Amended Complaint, and respectfully refers all matters of law contained therein to the Court.

AS TO THE CAUSE OF ACTION – NEGLIGENCE

5.1 Answering paragraph 5.1 of the Amended Complaint, AMAZON incorporates its responses set forth in paragraphs 1.1 through 4.13 of this Answer.

5.2 The allegations in paragraph 5.2 of the Amended Complaint contain legal conclusions to which no response is required. To the extent a responsive pleading is required, AMAZON denies the allegations in paragraph 5.2.

5.3 The allegations in paragraph 5.3 of the Amended Complaint contain legal conclusions to which no response is required. To the extent a responsive pleading is required, AMAZON denies the allegations in paragraph 5.3.

5.4 The allegations in paragraph 5.4 and its discrete subparts of the Amended Complaint contain legal conclusions to which no response is required. To the extent a responsive pleading is required, AMAZON denies the allegations in paragraph 5.4 and its discrete subparts.

5.5 AMAZON denies the allegations in paragraph 5.5 of the Amended Complaint, and respectfully refers all matters of law contained therein to the Court.

5.6 AMAZON lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5.6 of the Amended Complaint and, therefore, they are denied.

AS TO THE CAUSE OF ACTION – GROSS NEGLIGENCE

5.7 Answering paragraph 5.7 of the Amended Complaint, AMAZON incorporates its responses set forth in paragraphs 1.1 through 5.6 of this Answer.

5.8 AMAZON denies the allegations in paragraph 5.8 of the Amended Complaint, and respectfully refers all matters of law contained therein to the Court.

5.9 AMAZON denies the allegations in paragraph 5.9 of the Amended Complaint, and respectfully refers all matters of law contained therein to the Court.

AS TO DAMAGES

6.1 AMAZON denies the allegations in paragraph 6.1 of the Amended Complaint, and respectfully refers all matters of law contained therein to the Court.

6.2 AMAZON denies the allegations in paragraph 6.2 and its discrete subparts of the Amended Complaint, and respectfully refers all matters of law contained therein to the Court.

6.3 AMAZON denies the allegations in paragraph 6.3 and its discrete subparts of the Amended Complaint, and respectfully refers all matters of law contained therein to the Court.

6.4 AMAZON denies the allegations in paragraph 6.4 and its discrete subparts of the Amended Complaint, and respectfully refers all matters of law contained therein to the Court.

AS TO THE JURY DEMAND

7.1 AMAZON objects to Plaintiff's jury demand as Plaintiff is not entitled to a jury trial because the claims in the Amended Complaint fall within the admiralty jurisdiction of the Court.

AFFIRMATIVE DEFENSES AND OTHER MATTERS

FIRST AFFIRMATIVE DEFENSE

1. Plaintiff's Amended Complaint fails to state a claim upon which relief can be granted against AMAZON.

SECOND AFFIRMATIVE DEFENSE

2. Plaintiff and the alleged beneficiaries of the decedent's estate may lack capacity and/or standing to bring this action.

THIRD AFFIRMATIVE DEFENSE

3. The incident which is the subject matter of this action arose during the course of "international carriage" within the meaning of a treaty of the United States known as the Convention for the Unification of Certain Rules for International Carriage by Air, done at Montreal on 28 May 1999, ICAO Doc. No. 9740 (entered into force November 4, 2003), *reprinted in* S. Treaty Doc. 106-45, 1999 WL 33292734 (hereinafter "Montreal Convention"), and the rights of the parties are governed exclusively by the provisions of the Montreal Convention, which preempts any other claims and causes of action for death or bodily injury.

FOURTH AFFIRMATIVE DEFENSE

4. The alleged damages complained of were not proximately caused by any culpable conduct on the part of the AMAZON or AMAZON's employees, servants or agents.

FIFTH AFFIRMATIVE DEFENSE

5. The alleged damages complained of were caused or contributed to by the negligence or culpable conduct of parties other than AMAZON and AMAZON is, therefore, not liable to Plaintiff, or alternatively, the amount of damages recoverable by Plaintiff must be

diminished in the proportion to which the negligence or culpable conduct attributable to parties other than AMAZON bears to the negligence or culpable conduct which caused the damage.

SIXTH AFFIRMATIVE DEFENSE

6. Plaintiff's damages, if any, were caused and brought about by an intervening and superseding cause and were not caused by AMAZON or any person or entity for whom AMAZON is responsible.

SEVENTH AFFIRMATIVE DEFENSE

7. AMAZON asserts that if it is liable to Plaintiff, which liability AMAZON expressly denies, then AMAZON is entitled to a set-off for all settlements/benefits/payments received by Plaintiff and/or that some or all of Plaintiff's claims may be barred as a result of settlements/benefits/payments received.

EIGHTH AFFIRMATIVE DEFENSE

8. Plaintiff's claim for punitive or exemplary damages is barred or limited by the United States Constitution, the Montreal Convention, state constitutions, or other applicable law including, without limitation, proscriptions against double jeopardy and excessive fines and provisions assuring due process of law and equal protections of laws.

NINTH AFFIRMATIVE DEFENSE

9. Plaintiff's Amended Complaint and each and every cause of action alleged in the Amended Complaint are barred, in whole or in part, because AMAZON's conduct was in conformity with, and was pursuant to the applicable standard of care, statutes, governmental regulations and industry standards.

TENTH AFFIRMATIVE DEFENSE

10. Plaintiff's claims and alleged damages are limited, excluded and/or preempted by federal law, including the Federal Aviation Act of 1958, as amended (Pub. L. No. 5-726, 72 Stat. 731, formerly codified at 49 U.S.C. § 1301 *et seq.*, now re-codified and incorporated into 49 U.S.C. § 40101 *et seq.*), specially but not limited to 49 U.S.C. § 44112, and the provisions of the corresponding regulations promulgated by the Federal Aviation Administration.

ELEVENTH AFFIRMATIVE DEFENSE

11. Plaintiff's claims and alleged damages are limited, excluded, barred, and/or preempted by federal law, including the Airline Deregulation Act of 1978, Pub. L. No. 95-504, 92 Stat. 1705 (codified as amended at 49 U.S.C. §§ 40101-44310 (1994)).

TWELFTH AFFIRMATIVE DEFENSE

12. Plaintiff's Amended Complaint is premature in that it was filed and served before the completion of the investigations arising from the February 23, 2019 accident at issue, including the ongoing investigation of the National Transportation Safety Board ("NTSB").

NOTICE OF APPLICABILITY OF FOREIGN LAW

13. Pursuant to Rule 44.1 of the Federal Rules of Civil Procedure, AMAZON hereby gives notice that it intends to raise issues concerning the law of a foreign country in this matter.

RESERVATION OF FURTHER DEFENSES

14. AMAZON reserves the right to assert any additional affirmative defenses as may be appropriate based upon the facts or issues disclosed during the course of additional investigation and discovery or the findings of the NTSB.

Dated: July 12, 2019

Respectfully submitted,

By: /s/ Pamela Hicks

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CERTIFICATE OF SERVICE

I certify that on July 12, 2019 a true and correct copy of the Answer of Defendants Amazon.com, Inc. and Amazon Fulfillment Services, Inc. to Plaintiff's First Amended Complaint has been served via the U.S. District Court's ECF system on all counsel of record as follows:

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